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IN THE

Supreme Court of the United States

OCTOBER TERM, 1955

No. 17

UNITED GAS PIPE LINE COMPANY,
Petitioner,

v.

MOBILE GAS SERVICE CORPORATION
AND FEDERAL POWER COMMISSION,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT.

SUPPLEMENTAL BRIEF OF PETITIONER.

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November 4, 1955

BORG PRINTING COMPANY OF TEXAS, HOUSTON, TEXAS

In The

Supreme Court of the United States

October Term, 1955

No. 17

United Gas Pipe Line Company,

Petitioner,

v.

Mobile Gas Service Corporation and Federal Power Commission,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Third Circuit.

SUPPLEMENTAL BRIEF OF PETITIONER.

Mobile's counsel has called attention to Footnote 15, Page 49, of his brief for Respondent in Nos. 51 and 53, this Term, styled *Federal Power Commission v. Sierra Pacific Power Company* and *Pacific Gas & Electric Company v. Sierra Pacific Power Company* in which is discussed *United Gas Pipe Line Company v. Federal Power Commission* (1955, 5 Cir.) 220 F. 2d 706, cert. den. October 10, 1955, in No. 302. Mobile completely misunderstands such case. Properly understood, it lends no support to the inferences suggested by Footnote 15. No contract versus a change of rate filing under Section 4(d) was involved. No such issues were there involved as are here presented for decision. The facts conclusively so show.

The record and Fifth Circuit opinion show that the Commission permitted Supplement 11, dated September 7, 1945, to Rate Schedule F. P. C. Nos. 9, 10, and 11 to be filed by United Gas Pipe Line Company. This provided for maximum daily delivery of 73,000 MCF at a commodity price of 5¢; also for option to Mississippi River Fuel Corporation (Mississippi) to increase its delivery requirements. This option was exercised March 28, 1949, by additional daily requirements of 122,000 MCF, or an aggregate maximum daily delivery thereafter of 195,000 MCF.

To cover the additional delivery of 122,000 MCF the parties, on November 16, 1949, executed Supplement No. 15. This raised the commodity price for the additional gas to 6.5¢ per MCF, because it was anticipated that the 122,000 MCF would be met with purchases of "surplus gas" from the Carthage Field at an initial cost of 7.5¢ per MCF which when "rolled in" with the 5¢ of Supplement 11 produced the 6.5¢.

The Commission required in addition to Supplement 15 a letter agreement (i.e., Supplement 1 to Supplement 15) as part of the rate schedule for two essential purposes: (1) United to make, subject to Commission approval, an adjustment as of each March 1st in the commodity charge in the event that surplus gas purchases chargeable to Mississippi's additional requirements during the preceding 12 months should be less than 122,000 MCF, and (2) since United served other customers from the Carthage Field; if it should increase its contractual commitments to such others over an average daily delivery of 25,000 MCF, then all purchases by United under "surplus gas" contracts should be allocated between such others and Mississippi in that proportion which Mississippi's increased requirements bore to all increased requirements over commitments to such others in effect on March 28, 1949. It subsequently

developed that United was unable to obtain sufficient quantities of "surplus gas" to fulfill the additional commitment to Mississippi.

The Commission ruled that the rate schedules in Supplement 15 and Supplement 1 to Supplement 15 as approved by it contained as an integral part the two requirements of Supplement 1 to Supplement 15 so that the 6.5c commodity price was solely applicable (per demonstration in the adjustment as of each March first), to that proportion of surplus gas from the Carthage Field delivered to Mississippi against the additional 122,000 MCF, so that all gas delivered against the 122,000 MCF not identified as Carthage surplus gas was only chargeably at a commodity price of 5c pursuant to Supplement 11, *the only filed effective rate to Mississippi covering deliveries other than the 122,000 MCF.*

United contended that Supplement 15 replaced Supplement 11, and that being unable to obtain Carthage surplus gas in adequate quantities but being required by Commission approval to the additional delivery, it had obtained other gas, for such exoneration, at a cost of 7.5c and thus was entitled to so charge pursuant to Supplement 15, notwithstanding the provision of Supplement 1 thereto. The Commission answered that United could only obtain such right to charge 6.5c for non-Carthage gas by filing a proposed rate change pursuant to Section 4(d).

The Courts said the Commission was correct on both counts.

There was nowhere a claim or issue by any party that Supplement 15 and Supplement 1 to Supplement 15, *as contracts*, were superior or immune to Section 4 or subject to change only by prior held Section 5(a) proceedings. On January 3, 1953, after expiration of five months' suspension (R. 60), United's Conversion Tariff applicable to Mis-

sissippi superseded and replaced Supplement 11, Supplement 15, and Supplement 1 to Supplement 15, since which date said Supplements have not governed such deliveries.

Respectfully submitted,

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